

In re) Fair Hearing No. 17,138
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Appeal of)

The petitioner appeals a decision of the Department of PATH terminating her eligibility for VHAP benefits due to excess income.

1. The facts are not in dispute. The petitioner lives with her three children. The petitioner received VHAP until June 30, 2001, when the Department determined her to be overincome. At all times, her children have been eligible for Dr. Dynasaur coverage.

2. The petitioner is a graduate student and has gross income of \$3,123.21 a month. Included in that income is self-employment rental income based on her Schedule F tax return for 2000.

3. When the Department calculated the petitioner's eligibility for VHAP benefits the petitioner's earned income was subjected to a \$90.00 per month disregard. This brought her countable earnings to \$3,033.21 a month. The Department

notified the petitioner that her benefits would terminate because her income was in excess of the maximum of \$2,722 for a household of four.

4. The petitioner does not dispute any of the figures used by the Department. The issue in the case is whether the regulations require the Department to include depreciation in determining the petitioner's countable self-employment rental income, which she claims as an expense for tax purposes. The Department has allowed the petitioner to deduct all the other business expenses that she reported on her tax filings. The Department did not allow the petitioner to deduct any personal household expenses.

ORDER

The decision of the Department is affirmed.

REASONS

Under the VHAP regulations, all earned income from self-employment after business expenses is included as countable income for eligibility. W.A.M. § 4001.81(c). The regulations specifically list the types of business expenses that can and can't be deducted from income. As noted above, the Department

allowed the petitioner all her claimed business expenses except depreciation.

W.A.M. § 4001.81(d) includes the following provision:

Items such as personal business and entertainment expenses, personal transportation, depreciation, and payment on the principal of loans for capital assets or durable goods are not allowable business expenses.

(Emphasis added.)

Based on the above, it must be concluded that the Department correctly determined that the petitioner has countable income of \$3,033.21 per month. The maximum for eligibility under the program for a four-person household with dependent children is \$2,722 per month. P-2420 B (8). If the petitioner has income above that figure, she cannot be found eligible for VHAP. W.A.M. 4001.83 and 4001.84. There is no deduction for household expenses. As the Department's decision is in accord with its regulations, the Board is bound by law to affirm it. 3 V.S.A. 3091(d), Fair Hearing Rule 17.

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